



26 FEB 2004

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In re Application of :
FUJIKAWA, et al. :
U.S. Application No.: 09/763,194 : DECISION ON PETITION
Filing Date: 20 February 2001 : UNDER 1.182
Attorney's Docket No.: Q63075 :
For: METHOD AND APPARATUS FOR SURFACE :
DISCHARGE PROCESSING, AND AN :
ELECTRODE FOR SURFACE DISCHARGE :
PROCESSING :

This decision is issued in response to applicant's "Petition Under 37 CFR 1.182 To Accept Application As Continuing Application Under 37 C.F.R. 1.53(b)" filed 02 September 2003. No petition fee is required.

BACKGROUND

On 20 February 2001, applicants filed a transmittal letter to initiate a U.S. patent application. The transmittal letter specifically stated that it was intended to initiate a continuation application of PCT/JP99/02379. The transmittal letter was specific in stating that the filing was made under 37 CFR 1.53(b), and the accompanying declaration claimed priority to the PCT application under 35 U.S.C. 120. The submission included, among other materials, a specification (including claims) and drawings.

On 19 March 2001, the USPTO issued a "Notification Of Acceptance Of Application Under 35 U.S.C. 371 And 37 CFR 1.494 Or 1.495" (Form PCT/DO/EO/903) indicating that the application had been accepted as a national stage filing under 35 U.S.C. 371.

On 21 March 2001, the USPTO issued a filing receipt which also indicated that the application was considered a "371 of PCT/JP99/02379."

On 23 September 2003, applicant filed the present petition seeking to have the present application treated as a continuation application filed under 35 U.S.C. 111(a) rather than a national stage application under 35 U.S.C. 371.

DISCUSSION

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). See 37 CFR 1.494(f):

The documents and fees submitted ... must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371, otherwise the submission will be considered as being made under 35 U.S.C. 111.

In addition, section 1893.03(a) of the MPEP states that:

If there are any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed under 35 U.S.C. 111(a).

Applicant's original transmittal letter, filed 20 February 2001, specifically identified the accompanying submission as a continuation application of PCT/JP99/02379 filed under 37 CFR 1.53(b). Accordingly, the submission was not "clearly identified as a submission to enter the national stage under 35 U.S.C. 371." The present application should therefore have been treated as a continuation application filed under 35 U.S.C. 111(a), rather than a national stage application under 35 U.S.C. 371.

CONCLUSION

Applicant's petition is **GRANTED**.

The present application will be treated as a U.S. application filed under 35 U.S.C. 111(a) as a continuation of international application PCT/JP99/02379. This application will be assigned a filing date of 20 February 2001.

A corrected filing receipt will be issued, and the Group Art Unit will be informed of this decision.



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